

STATE OF MICHIGAN
COURT OF APPEALS

STATE TREASURER,

Plaintiff-Appellee,

v

STEPHEN RUSIECKI,

Defendant-Appellant.

UNPUBLISHED

March 27, 2003

No. 242238

Marquette Circuit Court

LC No. 02-039319-CZ

Before: Griffin, P.J., and Neff and Gage, JJ.

MEMORANDUM.

Defendant appeals as of right the judgment entered for plaintiff in this action under the State Correctional Facilities Reimbursement Act (SCFRA), MCL 800.401 *et seq.* We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant settled a civil rights action under 42 USC 1983 against the Chocolay Township Police Department for \$2,500. Plaintiff brought this action under SCFRA seeking 90% of the funds as reimbursement for the costs of defendant's imprisonment. After holding a show cause hearing, the court entered judgment for plaintiff.

On appeal, defendant argues that the application of SCFRA to proceeds of a 42 USC 1983 action is preempted by federal law. The SCFRA creates an obligation on the part of a prisoner to pay for the costs of incarceration and a right to reimbursement in the state. *State Treasurer v Sheko*, 218 Mich App 185, 188; 553 NW2d 654 (1996). In effect, the act requires a prisoner to pay for a portion of his living expenses. *State Treasurer v Gardner*, 459 Mich 1, 7; 583 NW2d 687 (1998).

Preemption will apply when state law is an obstacle to the accomplishment of the full purposes and objectives of Congress. *Schneidewind v ANR Pipeline Co*, 485 US 293, 300; 108 S Ct 1145; 99 L Ed 2d 318 (1988). The two purposes of 42 USC 1983 are to compensate victims for the deprivation of rights and to deter future violations of federal constitutional rights. *Owen v City of Independence*, 445 US 622, 651; 100 S Ct 1398; 63 L Ed 2d 673 (1980).

In *Hankins v Finnel*, 964 F2d 853 (CA 8, 1992), the plaintiff obtained a judgment against the state for violation of his rights after he was sexually assaulted by a prison instructor. The state sought to intercept funds due to the plaintiff before they were paid. The eighth circuit found that the deterrence purpose of § 1983 would not be met where the entity that violated the

plaintiff's rights lost nothing through the 1983 action. In *State Treasurer v Jackson*, 448 Mich 916; 532 NW2d 538 (1995), the Supreme Court denied leave to appeal and declined to follow Justice Levin's dissent which followed *Hankins*.

Here, the 1983 award was paid by an entity different from the state, and was compensation for a violation of rights that took place outside the correctional facility and preceded defendant's conviction. The deterrent effect was not focused on the state. The entity that violated defendant's rights was required to pay, and that payment is a deterrence to future violations, despite the fact that the money was received by the state. While defendant's compensation for his injury was greatly reduced, the portion paid to the state served to pay defendant's living expenses. There is no bar preventing money received as a result of a civil rights award being used to satisfy a preexisting obligation. *Beeks v Hundley*, 34 F 3d 658 (CA 8, 1994).

Affirmed.

/s/ Richard Allen Griffin

/s/ Janet T. Neff

/s/ Hilda R. Gage